Written Testimony to the US Civil Rights Commission
On Civil Rights and Police Practices in Minnesota

Presented by Communities United Against Police Brutality

April 18, 2017

This testimony is provided in response to an effort by the US Civil Rights Commission to assess the efficacy of measures to improve police practices in the State of Minnesota, especially as relates to disparate impact based on race, color, age, religion or disability.

Introduction

Communities United Against Police Brutality (CUAPB) is a Twin Cities-based organization working to end brutality, misconduct, and abuse of authority by police. We provide support and advocacy for people dealing with the effects of police brutality so they can reclaim their dignity and attain justice. We engage in political activities and litigation to change the policies and customs that lead to police abuses. We educate the community on their rights, interacting safely with police, documenting police conduct, and on specific policing issues. Despite being a local organization, we are internationally known for our work, which includes creating a national movement to require police officers to carry professional liability insurance.

Concerns Regarding Process

The stated purpose of the March 21, 2017 meeting was to collect information on the adoption and impact of recommendations outlined in the President's Taskforce on 21st Century Policing Implementation Guide[1] in the state of Minnesota. However, missteps in the process preclude the ability to achieve this goal in a meaningful way.

This process appears to be driven by Minneapolis city officials, particularly leadership within the city's Civil Rights Department. While city officials need to be at the table, they seem to have determined the other participants at this event. City officials are incentivized to select participants that will validate the current state. Thus, the process is skewed to create the appearance that policing in the Twin Cities is better than it actually is and that more progress has been made than is true.

Public notification of the March 21 meeting was wholly inadequate. Given the importance of this meeting and its stated goal, it should have been advertised widely, including via the city's website, social media pages and through mainstream media. None of these means were used to inform and attract the community at large. This lack of notification gives every appearance of attempting to limit public input. Members of our organization literally learned about this meeting by accident.

In addition, it appears that the only way for members of the public to learn about the opportunity to submit written testimony was through attending this poorly publicized meeting. Consequently, your commission will likely receive very limited input from the communities most severely impacted by policing issues in the Twin Cities.

The Implementation Guide[2] includes the advice "Pay attention to the process of planning, and engage all relevant constituent groups—from labor unions and student groups to faith leaders and neighborhood associations—in the process of planning design. Leadership can circumvent a number of problems or challenges by being transparent and inclusive of stakeholders in all phases of the planning process." Minneapolis city staff clearly failed to heed this advice.

This is not altogether surprising as the Implementation Guide—indeed, the Task Force itself—fails to recognize police accountability organizations as key stakeholders, separate from the community as a whole.[3] Just as the March 21 meeting failed to include any organizations whose sole purpose is police accountability, the Task Force itself excluded all such organizations.

Finally, it is unclear if other Minnesota communities will be hosting similar hearings from the US Civil Rights Commission. Policing issues in other communities vary significantly from issues in the Twin Cities. In particular, the Duluth Police Department has a long history of abuses against American Indian people and Latino residents of St. Cloud have serious concerns about treatment by the Stearns County Sheriff's Department as well as the St. Cloud Police Department.

Problems with Framing

According to the Implementation Guide, the President's Task Force on 21st Century Policing "created a road map for the future of policing and provides clear direction on how to **build trust with the public**."[4] [Emphasis ours.] The first "pillar" of task force recommendations is titled "Building Trust and Legitimacy."[5]

The problem is, this is a false framing of the issue. This, like so many other reform efforts, centers on improving "police-community relations." This framing proposes that if police and the community could somehow just get along better, trust would be built and the problem would be solved. This framing places half the responsibility for the problem on the community, when we have little control over police conduct and the violation of our rights—and bodies—with impunity.

Another problem with this framing is that the goal emphasizes addressing past abuses, ignoring ongoing abuses that are not being effectively addressed. Thus, the abuses continue and undermine the ability of recommendations in the Implementation Guide to have the desired impact.

Both historically and more recently, the function of policing has been to enforce bias and reinforce disparate treatment. Police brutality, misconduct and abuse of authority exist because they are functional for some segments of society. Efforts that focus on "building trust" are doomed to failure because they don't address the underlying cause of the problem.

We need to be clear—the issue is police abuse of authority, the oppression that underpins it, and the lack of accountability that encourages it. No amount of "dialogue" or other "relationship-building" measures will improve this because "relationships" aren't the underlying cause of the problem. We reject the proposition that it is even possible to "build trust" in the absence of systemic changes in policing.

Trust is a natural byproduct of justice. Unless efforts shift from "building trust" to police accountability and community control of the police, the problems this effort is meant to address will continue. In fact, if police were held accountable for their actions in meaningful ways, police misconduct would nearly disappear and trust would build on its own, with no special efforts needed.

Current Situation

Any meaningful effort to address policing issues must start with a realistic assessment of the current state.

Current Accountability Mechanisms

Minneapolis: The oversight mechanism in Minneapolis, the Office of Police Conduct Review (OPCR) has an abysmal record. In 51 months since its onset (Oct 2012 through Dec 2016) the OPCR has received over 1,500 civilian complaints. However, only six officers have been disciplined as the result of a civilian complaint (two 40-hour suspensions, one 10-hour suspension, and three written reprimands). This represents a 0.4% sustain and discipline rate. The national average for oversight bodies is 7-9%.[6]

Within the OPCR process, there are five steps to adjudicating a complaint. While the agency claims to provide civilian oversight of police, all five levels of the complaint process are controlled by city staff or the police department. A complaint to the OPCR is a complaint to the police themselves. In fact, this agency warns complainants that they are subject to Minn. Stat. §609.505, which criminalizes so-called "false complaints" to police.

In short, **the OPCR is, by design, a failure**. It is the antithesis of a police accountability mechanism.

In almost all cases, CUAPB recommends that community members NOT file complaints with the OPCR.

How was the OPCR designed to fail? From 1991 to 2012, Minneapolis had a functioning Civilian Police Review Authority (CRA). It was weak, but it was a true civilian model, and was frequently held up as a model for other cities by NACOLE (National Association for Civilian Oversight of Law Enforcement). Civilians filed complaints with an all-civilian agency, complaints were investigated by a civilian staff, and decisions were made by 3-member panels drawn from an 11-member civilian board.

In 2012, the Director of the Civil Rights Department, Velma Korbel, initiated and directed a secret effort to kill the existing CRA and replace it with the current system. The new system is a combination of the Police Department Internal Affairs Unit with a supposedly civilian side that reports to the Civil Rights Department. In reality, the police hold all the power. There was NO public participation in the design; the public and even the existing CRA Board was kept in the dark until the design was complete. Once the plan was revealed in a document leaked to CUAPB, the public reaction was literally unanimous in opposition. It was finally rammed through the City Council with 5 dissenting votes.

The OPCR can only recommend discipline; it is not designed to compensate complainants in any way. In theory, people who believe they have been discriminated against by the actions of the police can file a discrimination complaint with the Civil Rights Commission, another division of the Civil Rights Department. That body can actually award financial compensation for sustained allegations of discrimination. CUAPB used to recommend this avenue to complainants who had a basis to claim racial or other discrimination. We no longer recommend filing a complaint with this body either. It barely functions under the direction of Velma Korbel.

On the Commission's website, it says, "The Commission is comprised of 21 Minneapolis residents whose **primary function** as Commissioner is to serve on administrative hearing panels that decide discrimination cases…" (our emphasis). It is also revealed on their website that the last contested case hearing was in December of 2014, and that that hearing was the first in over 5 years. So there has been only one contested case hearing (the primary function of the Commissioners) in over 7 years! Furthermore, 7 seats on the 21-member Commission are currently vacant.

The Civil Rights Department has never had a good reputation in the community, but it has now descended into almost total dysfunction. It has also, itself, been the **subject** of a number of lawsuits claiming a hostile work environment and discrimination! See, for example, http://blogs.citypages.com/blotter/2013/11/former_mpls_civil_rights_dept_employee_says_bosses_exploited_her_and_told_her_not_to_complain.php

CUAPB documented these conditions at the time of Korbel's re-appointment hearing in 2014, see Attachment A. Though re-appointed, she was required to work with an outside management consultant.

St. Paul: The agency that addresses complaints in St. Paul is the Police Civilian Internal Affairs Review Commission (PCIARC). This agency operates under an audit model—investigations are conducted by the St. Paul Police Department's Internal Affairs division and a panel made up of five civilians and two police officers reviews the investigations and makes disciplinary recommendations. Established in 1993, this agency has been problematic and ineffective for years. Outside audits in 2009 and 2015 cited serious issues and outlined a series of recommendations, most of which were never acted on. Even the terms of a 2001 mediation agreement with the St. Paul NAACP have been largely ignored. Recently, the St. Paul city council voted to adopt the recommendation to remove officers from the panel.

Since its onset, the PCIARC has received 2993 complaints from community members. Of those, 174 complaints were sustained and disciplined. This represents a sustain rate of 5.8%--far better than the rate by Minneapolis' OPCR but still below the national average for civilian oversight bodies.[7]

Criminal Prosecution and the BCA

Criminal prosecution of police for harming members of the community is exceedingly rare in Minnesota. Even when police are terminated for harming a community member, this virtually never results in prosecution. In fact, the prosecution of Ofc. Jeronimo Yanez for the death of Philando Castile appears to be the first such prosecution in the history of the state.

Prosecutors have, by necessity, a close working relationship with police officers. They rely on officer testimony for convictions in criminal cases. Prosecuting an officer would harm that officer's credibility in future court cases and likely affect the prosecutor's relationship with other officers and the department.

Even if a prosecutor is interested in pursuing criminal charges, a proper investigation would be needed. In many police cases, prosecutors have come to rely on the Bureau of Criminal Apprehension (BCA) for such investigations. Our research into the investigation of the Jamar Clark shooting has shown this BCA investigation to be biased, incompetent or both.[8] Although no law or collective bargaining agreement requires it, the BCA routinely waits 48 hours before interviewing officers involved in critical incidents, giving those officers the opportunity to collude before speaking to investigators. There is a double-standard in the treatment of investigations when the matter is police conduct. Further, the BCA's lack of transparency raises questions in the community about whether they can be trusted to perform legitimate investigations into police crimes.

For an accountability mechanism to serve as a deterrent to future violations, it must occur often enough to be a potential consequence for that conduct. Given the rarity of prosecutions for harming members of the community, police officers quite realistically assess that prosecution is not a risk.

Prosecution Practices

Poor practices by city attorneys and county prosecutors across Minnesota exacerbate accountability failures that allow and encourage brutal policing to continue.

In both Minneapolis and St. Paul, it is axiomatic that individuals who have had their rights violated by police will be charged with some combination of obstructing legal process (MN Stat. 609.50), disorderly conduct (MN Stat. 609.72) or 4th or 5th degree assault (MN Stat. 609.2231, MN Stat. 609.224). Prosecutors routinely engage in a "scorched earth" practice of vigorously prosecuting those who have experienced police brutality as a means of creating a Heck bar to limit the potential for civil liability suits.

These same prosecutors routinely fail to prosecute police officer who engage in clear criminal conduct toward community members. One recent example involves a vicious attack on Frank Baker—a completely innocent man—by St. Paul Police Officers Brian Ficcadenti and Brett Palkowitsch in which Mr. Baker was mauled by a police dog and kicked so badly that both lungs collapsed. The city recently settled with Mr. Baker for $2 million—the largest settlement in the city's history. Palkowitsch was fired but later reinstated by arbitrators who ruled that the city could not fire him as he and other officers who engaged in similar conduct had not been disciplined in the past. Palkowitsch's conduct was clearly criminal. If he had been prosecuted rather than processed through the internal disciplinary process, he would likely have been found guilty of at least a gross misdemeanor and, thus, would have lost his license under POST Board rules (see below). See http://www.mprnews.org/story/2017/04/05/palkowitsch-reinstated-st-paul-police-frank-baker

To avoid prosecuting police, city and county attorneys rely on faulty investigations by the BCA and on a grand jury process that is secretive, non-adversarial and is constituted largely to

provide political cover to prosecutors wishing to avoid prosecuting police officers. In the history of the state of Minnesota, there has never been a grand jury indictment of a police officer for brutalizing or killing a community member.

Peace Officers Standards and Training Board (POST Board)

The MN POST Board could be an important force for ensuring accountability, fairness, and transparency in dealing with police misconduct. In addition to setting standards and procedures for officer education, licensing, and ongoing training, the POST Board is required by State Statutes to set standards for the handling of civilian complaints by local agencies, and to handle civilian complaints themselves when local agencies are unwilling or unable to do so. In addition, the POST Board is the only agency capable of responding to complaints against Chief Law Enforcement Officers.

The current POST Board seems determined to be a hindrance to police accountability, rather than acting on their mandate as outlined in their enabling statute.

CUAPB has been engaging with the POST Board for over four years. In August 2012, our organization submitted 31 complaints to the POST Board on behalf of 29 individuals. These complaints were accompanied by extensive evidence, including videos. After urging the board for over a year to institute an independent investigation, the POST Board finally acted on one of the complaints. But once the investigation was complete, the results were swept under rug in violation of MN Statute 214.10, particularly Subd. 11(a) and 11(b). Please see Attachment B, which outlines these violations.

We met numerous times with the former executive director and have attended many POST Board meetings, urging the board to follow their own statutes—to no avail. While they pay lip service to their mandate for setting and upholding standards of conduct for police officers, they take little action in this regard. In addition to our own experience, we have continued to receive numerous accounts from members of the community who attempted to file complaints with the POST Board but who were turned away. We are also aware of several incidents in which POST Board licensees were convicted of gross misdemeanors and felonies but the POST Board failed to take action on their licenses, despite a mandate to do so.

Inaction by the POST Board sets a terrible example for accountability at the local level, and contributes to a culture of impunity.

In addition to their failures in addressing licensee misconduct, the POST Board consistently fails to meet their obligations under the Minnesota Public Data Practices Act, Chapter 13. Specifically, the POST Board has refused for three years to release public data on complaints against their licensees that they received from members of the community. At one point, they stated to us that they are not subject to the Data Practices Act, which is obviously false. Because of this lack of transparency, we can't even estimate how many dangerous and racist officers are still terrorizing the community, who would have lost their licenses if the POST Board had followed even the minimum requirements for oversight.

CUAPB has presented this information, with extensive documentation, to the POST Board itself, to the Public Safety Commission which supposedly oversees it, to the MN Attorney General, and to Governor Dayton. None have taken any action, or even responded, other than

to tell us to contact the POST Board. CUAPB would greatly appreciate attention to this matter from the US Civil Rights Commission.

Civil Rights Litigation

The US Commission on Civil Rights is rightfully very interested in the effects of the use of Section 1983 lawsuits in countering discrimination and the violation of Constitutional rights in policing. There is much academic research on the achievement of the goals of Section 1983. We would call your attention to an outstanding recent paper written by Joanna Schwartz of the UCLA School of Law, and published June 2014 in the NYU Law Review: http://www.nyulawreview.org/sites/default/files/pdf/NYULawReview-89-3-Schwartz.pdf

Schwartz says, "Civil rights damages actions are 'designed to provide compensation for injuries arising from the violation of legal duties, and thereby, of course, to deter future violations'" (page 952), quoting Justice Scalia in City of Monterey v. Del Monte Dunes, 526 U.S. 687, 727 (1999). Her research shows that, from 2006 to 2011, officers were indemnified by the cities to the extent that officers paid only 0.02% of the judgments and settlements in the 44 large cities studied, and none of the judgments and settlements in the 37 smaller jurisdictions studied. Thus, though plaintiffs received considerable compensation, officers suffered virtually no personal consequences.

She says, "Although indemnification furthers §1983's compensation goals, it frustrates §1983's deterrence goals by limiting the impact of compensatory and punitive damages awards on individual officers. In most jurisdictions, officers can have no reasonable expectation that their misconduct will lead to financial sanctions. Lawsuits appear infrequently to have negative ramifications for officers' employment. And available evidence suggests that the threat of being sued does not significantly influence officer behavior." (page 953)

How can we achieve the deterrence goals of §1983? If we do so by greatly reducing the municipal indemnification of officers, we unfairly undermine the goal of compensation. Can deterrence be achieved by the financial consequences imposed by lawsuits against the cities? Cities are already bearing that financial burden, and yet there is substantial agreement that the existing financial consequences have little deterrent effect. However, one risk management strategy employed by Minneapolis and other cities is a practice of "scorched earth prosecutions" as discussed above, to limit the ability of plaintiffs to bring suit against the city.

To illustrate the current difficulty in achieving deterrence through financial costs to cities, Schwartz states, "In previous work, I showed that few police departments gather and analyze information about lawsuits brought against them and their officers; departments do not keep track of which officers have been named as defendants, the nature of the allegations made against them, the information developed during litigation, or cases' outcomes." (page 956)

This appears to be the case in Minneapolis. CUAPB has been attempting for years to compile reliable data on lawsuits against Minneapolis and its police officers. Part of our problem is that the city consciously frustrates our efforts. But we believe that a significant part of the problem is that the city does not keep these records in any organized fashion, if at all. It is clear the City Council has very little idea of the scope and the nature of the problem. We strongly recommend that Minneapolis and other cities rectify this situation. We note, by contrast, that Chicago has a summary of lawsuits available to the public online.

There is a much more important and effective way to achieve both the compensatory and deterrence goals of §1983: individual professional liability insurance requirement for police officers. The insurance would guarantee that plaintiffs can be compensated, and the insurance companies, through higher premiums for officers with problematic histories, would provide a financial incentive to avoid misconduct and a consequence if they fail to do so. The worst officers would become uninsurable and thus unemployable. Please see the section of our testimony on this subject.

Labor Practices and Arbitration

Labor practices contribute significantly to the lack of accountability for police who engage in misconduct. While all employers have a right to be treated fairly in disciplinary proceedings, it is both perception and reality that police officers have special privileges in this regard.

Not only are police officers afforded preferential treatment in criminal investigations of their conduct (see the section above on Criminal Prosecution and the BCA) but the community sees police officers as being rewarded for misconduct with paid time off (often referred to by the community as paid vacations) during the investigation, back pay when they are reinstated by arbitrators, medals and other recognition even when the justification for force is dubious, and even promotions resulting from police administration attempts to remove problem officer from regular contact with the public. There is literally no other job in the working world in which you can cost your employer huge sums of money and embarrassment and harm the community and still remain employed in the job.

Arbitration, while a right under most collective bargaining agreements, is an especially daunting barrier to police accountability and culture change. In Minnesota, in virtually all cases, arbitrators—who are private contractors and not accountable to the community—restore problem officers to their positions, making it nearly impossible for departments to make terminations a reality. Police administrations know this and sometimes use arbitration to gain political advantage by presenting the appearance of acting to terminate the officer while relying on arbitration to cover for the officer's continued employment. Such was the case in Minneapolis when police administration fired Ofc. Blayne Lehner for a minor office while failing to discipline him for kicking a handcuffed man in the face, shattering his facial bones and costing the city $360,000 in lawsuit settlement.

Arbitrators recently reversed the termination of Ofc. Brett Palkowitsch by the City of St. Paul despite egregious conduct that cost the city's taxpayers $2 million. Although the city referred to Ofc. Palkowitsch as "dangerous and untrainable," arbitrators concluded that he is a "very effective" officer.[9]

Specific Recommendations

Arbitration Reset

Police departments, even when they do wish to discipline problem officers and change the culture of the organization, live under the burden of past practices making future discipline impossible. Arbitrators rightfully look for consistency in discipline and cite the lack of previous discipline as the rationale for overturning current discipline.

Police administrations can resolve this issue by engaging in a "reset" process—outlining very specific policies, training on those policies, issuing a Statement of Consistency, and applying consistent discipline from that point forward.

Require Police Officers to Carry Professional Liability Insurance

Individual professional liability insurance for police officers is a fair and economical way to handle problem officers who brutalize the community. It is a simple idea that would save lives and a significant amount of money for taxpayers. Officers purchase an individual professional liability insurance plan for which he/she is responsible, with the base premium paid by the city. Officers who do not engage in misconduct should see no increases in their premiums while those who engage in conduct that results in complaints and lawsuits would be responsible for r premium increases. At some point the officer could be deemed by the insurer to be too risky to continue insuring.

There is no reason why police cannot join a long list of other professionals required to have this type of insurance. The coverage would protect both victim and officer, providing the victim with compensation and protecting the officer from bankruptcy. This model of police accountability is gaining interest across the US, and there has been a recent increase in officers purchasing such liability insurance on their own. Judging from the enthusiastic response in Minneapolis to our petition to get a charter amendment on the ballot requiring this insurance for police, people are ready for this sensible idea.

The concept is a win-win for community and police. The community would be safe from rogue police officers and they would not be paying out for illegal behavior, saving millions of dollars. Officers would no longer have to witness brutality by co-workers and have to lie to cover it up. Trust between officers would be greatly strengthened. The thin blue line of policing would be gone, making it safer for everyone and improving the work environment immensely for police. Policing should be an honorable job and with the implementation of professional liability insurance for police it could become a job worthy of the slogan "To Protect and Serve."

Scrap Implicit Bias Training—An Unscientific Fraud

Training to reduce implicit bias is a major component of current recommendations to reform policing. Though the idea and the research goes back over a decade, public awareness of implicit bias and the use of implicit bias training has only become common since the killing of Michael Brown in the summer of 2014, followed by other well-known deaths of black men at the hands of police. Implicit bias training is one of the most prominent—and one of the most implemented—recommendations of the President's Task Force on 21st Century Policing. Here in Minneapolis, it is one of the three components of the pilot project by the National Institute for Building Community Trust and Justice (NITJ). Indeed, as you heard from Chief Harteau, all Minneapolis police officers have taken the training.

It is ironic that, just as this training has become mainstream, the scientific literature regarding implicit bias training is showing that the enduring effects of the training are negligible. The testimony you heard on March 21 from Dr. Gene Borgida was very instructive. He reviewed several large meta-studies of the implicit bias research. Earlier studies showed that some interventions showed measurable positive effects – though some did not. But those studies only measured the effect directly after the training. Even the 2014 study he cited, a "research contest" on 17 interventions, did not measure the durability of the effect.

A 2016 study, also cited by Dr. Borgida, was the first large study to test the long-term effects of implicit bias training. It found that NONE of the trainings showed any measurable effect lasting longer than 24 hours to a week. He also noted that none of the studies showed any effect on explicit biases due to the various training methods studied. We appreciate his testimony, and learned from it, but we wish Dr. Borgida had been more forthright and explicit about the implications. He did say that we should not be surprised by these results because implicit biases are an ingrained habit. What his testimony really showed was that implicit bias training, as currently practiced, is utterly worthless.

We have found other evidence supporting this conclusion. Dr. Calvin Lai of Harvard, who appears to be one of the researchers in the studies mentioned by Dr. Borgida, has recently posted a very forthright account of his research interests:
http://calvinklai.weebly.com/research-interests.html

Dr. Lai found that some interventions were successful in reducing implicit prejudice immediately, "but that none continued to have an effect after twenty-four hours. While much progress has been made in temporarily reducing implicit biases, these findings suggest that implicit biases are more stable than previously thought." He points out, moreover, a finding that further debunks the value of implicit bias training: "An unexpected set of results from the meta-analysis came from mediation models examining the relationship between implicit bias, explicit bias, and behavior. I found that experimentally induced changes in implicit biases did *not* statistically mediate corresponding changes in explicit biases **or behavior**." (emphasis ours)

There seems to be little doubt that implicit bias exists, probably in most of us. What it is, and how it affects behavior is much less obvious. Implicit bias seems to be defined as, "whatever it is that the Implicit Associations Test (IAT) measures". While it has effects, its effects are dramatically less than the effects of **explicit** bias, which remains rampant in large-city police forces.

Explicit bias is much more amenable to measures that would affect actual police behavior. It is often explicitly stated, based on the number of language complaints received from the public. Its effects are generally more explicit. Training and coaching are not significant antidotes to explicit bias. If an officer has not learned in kindergarten not to call people bad names and hit other children, he needs more than just training at this stage in his life. The good thing is that, unlike implicit bias, explicit bias can be effectively dealt with through clear policies and consistent enforcement with significant discipline. A rogue officer will not be fired due to his implicit bias. But the effects of explicit bias are observable and punishable.

Unfortunately, implicit bias training is detrimental for reasons beyond the significant waste of time and money. Just the constant public relations emphasis on it detracts from considerations of explicit bias and overt racism.

But if the police department's goal is increasing trust through good public relations, rather than actual improvement in police conduct and racial equity, then the concept of implicit bias is a bonanza. It shows they are doing something about racial justice—witness Chief Harteau's pride in her department's completion of implicit bias training. Most importantly, it reinforces the

notion that cops are just like the rest of us—we all have implicit bias. This ignores the demonstrably greater level of racism among police officers, and their ability to act on their racial prejudices with billy clubs, Tasers, dogs, and guns.

Our recommendation is to totally halt all implicit bias training, and to disavow the discredited concept that it holds any promise for reducing discrimination in policing.

Stop Selling the Idea of Body-Worn Cameras as an Accountability Mechanism

After release of a much-vaunted study out of Rialto, CA[10] about the efficacy of body-worn cameras in decreasing police officer use of force, implementation of these devices has become a priority for police departments of all sizes across country. The adoption of body-worn cameras has become the central "take away" from the President's Task Force on 21st Century Policing, incentivized by large grants to departments that adopt these devices.

More recent studies show mixed results. A study by Ariel et al, one of the largest randomized-controlled trials in criminal justice research, indicates that the use of body-worn cameras failed to reduce the use of excessive force by police officers.[11]

One problem with body cams is what they capture and what they don't. These cameras sit on the chest or shoulder or are mounted on glasses worn by the officer and are pointed at the community member. They don't actually capture the officer's actions, only the community member's responses to those actions. Hearing the interaction may be beneficial or it may not. Due to their location and angle, chest and shoulder-mounted models create perspective bias, giving the appearance that the community member is larger and more menacing to the officer.

More important than the cameras themselves are the policies put into place around the use of these devices. If police officers are allowed to turn them on and off at will, if the video is not preserved in ways that prevent its destruction or alteration or if the footage is not available through public data requests, then these devices are useless as a tool for police accountability. In 2016, the Minnesota legislature altered the state's Data Practices Act to make all footage non-public. Without good policies and serious consequences for violating them, proposals to purchase body cameras are little more than a financial boon for TASER International and the rest of the corporations peddling these body cams as the miracle cure for police brutality.

Finally, as St. Louis University law professor Justin Hansford aptly points out[12], even with video evidence such as in the Eric Garner case, the laws are heavily stacked against ever holding police accountable.

K9 Policy: From "Locate and Bite" to "Locate and Bark"

The use of police dogs has a long racist history, and reform of K-9 policy would have a particularly dramatic impact in the African American community. The fear of police dogs among blacks is well-founded, both in history and in current practice. Dogs were first used to hunt down escaped slaves. Even after the Civil War, police and private patrols used dogs to terrify and control the newly-free slaves. The civil rights movement of the 60's faced police dogs used to control crowds and peaceful demonstrations.

But the racist use of police dogs is not just an historical practice. "On the day that Michael Brown died in August 2014, a policeman in Ferguson, Missouri guided the dog he handled to

urinate on a makeshift memorial at the site where his colleagues had shot Brown hours before. ... One long-running complaint in Ferguson was that police regularly used their dogs with excessive force against only African Americans. In the recent past, police in Los Angeles inflicted more injuries with dogs than guns, batons, or tear gas, and did so disproportionately against black people, who they often called 'dog biscuits.' These cases are not isolated. Dogs have been a tool for the intimidation and control of African Americans since the inception of slavery."[13]

Recent high-profile cases of excessive force by K-9s in the Twin Cities have also involved African Americans.

There is a promising reform that is being implemented in some cities, a reform that significantly reduces injuries to suspects, dogs, and officers, and that is saving money in lawsuits. If one assumes, perhaps too charitably, that police departments no longer wish to use K-9s for racist terror, then this reform is truly a win-win situation.

Though not always put in writing, we observe that the current K-9 policy is best described as "locate and bite". The promising alternative to this is "locate and bark". Though biting may very occasionally be required to capture and hold a dangerous suspect, K-9s today are seldom used or needed to chase people across fields. In most cases, as in all the recent high-profile cases, the suspect is already unable to flee.

One of the important positive trends in policing is an emphasis upon de-escalation. Using a K-9 to bite a suspect virtually always leads to significant escalation of the conflict. When used upon a person who is merely uncooperative, that person necessarily becomes actively resistant. No one can remain calm and cooperative and follow officers' orders when they have a dog biting their leg. Even a non-violent person will necessarily fight back and try to free themselves from the terror and pain of a dog bite.

In St. Paul recently, Frank Baker was awarded a record-breading settlement of $2 million for his crippling injuries. He was totally innocent and wrongly-identified when he was ordered from his car. When he was too slow to follow officers' orders, they sicced the K-9 on him, who not only bit him, but dragged him in circles, according to the arbitrator's report. Mr. Baker was of course unable to remain still and cooperative to be handcuffed. When another officer arrived at this chaotic scene, he (wrongly) felt it necessary to kick Mr. Baker to gain his cooperation, to the point that he broke his ribs and collapsed both lungs. Police did many things wrong in this encounter – but it all started with the totally unnecessarily escalation of using the K-9 to bite.

In May 2013, Terrance Franklin was trapped in a cramped basement by five SWAT team members plus a K-9. Vastly out-numbered and unarmed, there is no reason to believe that Franklin would have attacked anyone. But when the dog bit him, he, being human, was unable to remain calm and cooperative. The situation became chaotic, and he was shot dead by the officers.

This must stop. We ask the U.S. Civil Rights Commission to recommend this important policy change.

<u>Stop Reimbursing Police Officers for "Bulletproof Warrior" Training</u>

Training is an important, yet expensive aspect of ongoing professional development. Despite its importance, much of the training available to police officers on the open market is filled with unsubstantiated "theories" that exaggerate the dangers of policing and encourage a "kill or be killed" mindset. Such training "portrays a world of constant and increased threat to officers, despite more than two decades of declining violent crime in the United States, and the fact that the last few years have been among the safest to be an American police officer."[14] Quoted in a New York Times article on the issue, Chuck Wexler, Executive Director of the Police Executive Research Forum stated, "Courses like this reinforce the thinking that everyone is out to get police officers. This teaches officers, 'If you hesitate, you could lose your life.' It is the exact opposite of the way many police chiefs are going."[15]

Although many departments have stopped using this training, they continue to reimburse for and accept continuing education units from these courses. This practice must end.

Independent Investigations Run by Independent Prosecutors

The utter failure of the grand jury process to produce indictments in police critical incident cases and the lack of prosecution of police in these incidents denies justice to those harmed in these incidents and validates the community's perception of police being above the law.

CUAPB recommends the establishment of a permanent, independent special prosecutorial office to investigate and prosecute incidents by police officers that result in great bodily harm or death (critical incidents). This office must have sole responsibility for investigating and prosecuting these incidents. Prosecution must commence from an investigation and complaint, not an indictment. The use of grand juries to address police critical incidents must end.

Progressive members of the state legislature have proposed bills that would enact these measures. Unfortunately, the political climate in our current legislature will not permit these bills to move forward, though we will continue to push for them in future sessions.

Require the POST Board to Actually Enforce the Law

Perhaps we can best sum up our recommendations by saying that the POST Board should function in a manner similar to other state professional licensing boards:

- It should set and enforce standards of conduct for the licensed individuals.
- It should accept and act upon complaints submitted by members of the public.
- It should conduct or arrange for independent investigations of misconduct.
- It should conduct public hearings regarding potential licensing actions (and Data Practice statutes should be modified as needed to permit this).
- It should rule on potential license suspensions or revocations affording officers due process with provision for appeal.
- It should publish information on its website on the nature of accusations and the final actions taken by the board.
- It should require all licensees to obtain and maintain professional liability insurance as a condition of continued licensure. See our section regarding Professional Liability Insurance for Police.

In addition, the POST Board should diligently monitor local agencies and enforce compliance with the standards set for the handling of complaints from members of the community. The POST Board should also take seriously its unique responsibility to respond to alleged misconduct by Chief Law Enforcement Officers, because it is unrealistic to expect a local Internal Affairs Unit to investigate and discipline its own Chief.

The Governor and the Public Safety Commission need to take responsibility for oversight of the POST Board.

Please also refer to Attachment C: CUAPB POST Board Demands.

Remove Police as Responders to Mental Health Crises

Studies show that 50% of people killed in police incidents nationally were in a mental health crisis at the time of the incident. In dealing with people who are known to have mental health problems, police should have the expertise of a small team of on-call mental health experts who have the experience needed to assess a situation and de-escalate it before a tragedy occurs. Certainly, law enforcement should be present if a weapon is involved, but they should act at the discretion of the mental health team. Of late, more attention is being paid to this problem in Minneapolis. The MPD is in the process of training all their officers in Crisis Intervention Training. The officers who show an aptitude and interest in assisting on these calls should be assigned accordingly. This should not, however, preclude the presence of mental health specialists on applicable 911 calls.

End Militarization of Local Police, Most Uses of SWAT Teams, and Warrant Service Abuse

The increasing use of military weaponry by police departments to handle demonstrations is disturbing. The recent use of military equipment from the Hennepin County Sheriff's office during the Standing Rock, ND protest has brought home frightening images of domestic war. The MPD and Sheriff's offices have no need for this equipment, nor is it even practical to use in our city. Use of these war machines makes people feel they are perceived as the enemy, rather than as peaceful people trying to legitimately protest wrongdoing by the government.

Another escalation by police is the growing number of unwarranted, violent invasions of people's homes by SWAT teams. Here in Minneapolis we have a long history of mistaken SWAT raids. One, based on false information, ended with the deaths of two innocent elderly people, Lloyd Smalley and Lillian Weiss. They died as a result of smoke inhalation from a fire started by a stun grenade that was thrown into the home. There have been other illegal SWAT raids through the years. One of the most spectacular was the mistaken raid on a Hmong man's home, during which police fired 22 times, luckily missing the man and his six children and wife, who were home. The man fired at the police, not knowing who they were or what was going on, but stopped when his sons told him the intruders were police. After this botched raid, the officers were rewarded with medals for valor. More recently, a woman sued the city for $2 million when she was burned by a flash bang grenade during a mistaken raid. After the deaths of Smalley and Weiss, stun grenades were banned for a time, then reinstated.

There are too many stories of SWAT team raids that started off aggressive and then spun out of control. These raids seem to be getting more and more violent. On the other hand, there was a SWAT team called to a situation on a reservation in northern Minnesota. In spite of there being law enforcement from four jurisdictions, the only shots fired in the day long incident were

fired by the people inside the house, and no one was injured. These raids must not be conducted as if people are presumed guilty. Police officers are not supposed to mete out punishment, but only to apprehend suspects.

The unfettered ability of officers to come into a house without a warrant is another breach of the right to feel secure in one's home. There is virtually no way for a person to deny an officer entrance because there are many instances of simply battering a door down. It is a situation where the occupant must do everything right, which is different based on which officer shows up. How amazing that police want the public to trust them, to respect them, when they are constantly requiring more and more obedience, and the rules keep changing.

The public is not asking for superficial actions from the police, like coaching kids in sports, or inviting folks to picnics, or giving away trinkets at festivals. The public is asking for respect, to feel safe in the presence of police and to not be brutalized or killed for absolutely no reason. They are asking for prompt and competent help when they call 911, not to be ignored because they live in the wrong neighborhood. When we see progress in all these areas, then we can talk about trust. We're a long way from that today.

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[1] COPS Office. 2015. *President's Task Force on 21st Century Policing Implementation Guide: Moving from Recommendations to Action*. Washington, DC: Office of Community Oriented Policing Services.
[2] Ibid. Page 6
[3] Ibid. Page 23
[4] Ibid. Page 1.
[5] President's Task Force on 21st Century Policing. 2015. *Final Report of the President's Task Force on 21st Century Policing*. Washington, DC: Office. Page 1.
of Community Oriented Policing Services
[6] Data received from the Office of Police Conduct Review via data practices act requests.
[7] Data received from the St. Paul Police Department via data practices act requests.
[8] Jamar Clark Analysis Fact Sheet 1 http://www.cuapb.org/reports
[9] Palkowitsch Arbitration Decision. https://www.scribd.com/document/344182927/Palkowitsch-Arbitration-Decision
[10] *Self-Awareness to Being Watched and Socially-Desirable Behavior: A Field Experiment on the Effect of Body-Worn Cameras on Police Use-of-Force.*
http://www.policefoundation.org/sites/g/files/g798246/f/201303/The%20Effect%20of%20Body-Worn%20Cameras%20on%20Police%20Use-of-Force.pdf
[11] Ariel, B. et al. 2016. *"Contageous Accountability": A global Multisite Randomized Controlled trial on the Effect of Police Body-Worn Cameras on Citizens' Complaints against the Police.* CRIMINAL JUSTICE AND BEHAVIOR, 201X, Vol. XX, No. X, Month 2016, 1–24.
[12] *Body cameras won't stop police brutality. Eric Garner is only one of several reasons why.* Justin Hansford. December 4, 2014. Washington Post
[13] *Canine Terror.* Jacobin Magazine, https://www.jacobinmag.com/2016/05/dogs-bloodhounds-slavery-police-brutality-racism/
[14] *Minnesota Officer's 'Bulletproof Warrior' Training is Questioned.* Mitch Smith and Timothy Williams. July 14, 2016. New York Times. https://www.nytimes.com/2016/07/15/us/minnesota-police-officers-bulletproof-warrior-training-is-questioned.html?_r=0
[15] Ibid.

ATTACHMENT A

Communities United Against Police Brutality™

4200 Cedar Avenue South
Minneapolis, Minnesota 55407
612-874-STOP
www.CUAPB.org

March 16, 2014

Minneapolis City Council
350 South Fifth Street, Room 307
Minneapolis, Minnesota 55415

RE: Reappointment of Velma Korbel as Director of the Civil Rights Department

Dear City Council Members:

Communities United Against Police Brutality was established in 2000 to provide a voice for people dealing with the effects of police brutality and to ensure accountability of police to the community. We have closely followed the work of the Civil Rights Department as it relates to police oversight and discipline. Our experiences and observations compel us to oppose the reappointment of Velma Korbel to the position of Director of the Civil Rights Department.

Ms. Korbel played the lead role in dismantling the CRA and replacing it with the OPCR. The CRA was never given the power or the resources to be sufficiently effective, but it did provide an opportunity for victims of police misconduct to complain to a civilian agency, rather than relying on the police to police themselves. The CRA was formed over 20 years ago in response to community outrage over the deaths of an elderly black couple in a police raid. Community members put thousands of hours into its formation, operation, and several redesigns.

Ms. Korbel has destroyed what the community demanded, in a process that was secret and avoided all public input. The proposal was six months along, and in nearly its final form, when the public – or even many Council members – were alerted by CUAPB after we were given a leaked document. Even the members of the CRA had not been informed or consulted. When Ms. Korbel was forced to present the proposal at a public CRA Board meeting, she refused to answer questions and left the room. She did say, however, that no substantial changes would be made, regardless of public feedback. She held true to her word, despite unanimous public opposition at three community meetings mandated by the City Council.

The new OPCR plan was so bad that it was opposed in a StarTribune editorial (http://www.startribune.com/opinion/editorials/165792186.html) and in a letter from the National Association for the Civilian Oversight of Law Enforcement. The NACOLE letter said, "as proposed, the model for Minneapolis will effectively eliminate independent civilian oversight..."

The predictions have come true. The city has suffered the embarrassment of a front page news article documenting zero discipline after handling 439 cases (http://www.startribune.com/local/minneapolis/221422101.html). The PCOC, the only group in the new agency to meet publicly, did not meet for an entire year, and has yet to schedule their first "community listening session". The PCOC was designed to have no access to actual case files, so their ability to audit the investigations is meaningless.

Our partners in advocacy and activism report similar dysfunction in the other divisions of the Civil Rights Department. If you wish to demonstrate your stated concerns for police accountability and racial equity, you must deny the re-appointment of Velma Korbel.

(over)

We are also concerned about reports of an abusive work environment within the Civil Rights Department. Indications have come from news reports, lawsuits filed against the department, staff turnover, and our own contacts with former employees. A recent whistle-blower lawsuit has been documented in City Pages (http://blogs.citypages.com/blotter/2013/11/former_mpls_civil_rights_dept_employee_says_bosses_exploited_her_and_told_her_not_to_complain.php). The allegations point to a situation detrimental to city employees, a huge potential financial liability to the city, and an inability to perform the important functions of the Civil Rights Department. It is the Council's responsibility to oversee this department, and it must investigate these allegations further before voting on the re-appointment of Velma Korbel.

It is time for the City Council to call for a search for a better Director, one who will at long last clean up the Civil Rights Department, implement greater accountability for our police, and be a worthy ambassador for the city's commitment to equity.

For justice,

Michelle F. Gross/es/
Michelle F. Gross
President

ATTACHMENT B

Statement to the POST Board by CUAPB, January 22, 2015

We came to the POST Board meeting one year ago to present clear evidence that the Executive Director was in violation of State law in the handling of multiple complaints we had brought to him. We expected action from this board to exercise its oversight responsibilities and correct these violations.

Seeing no action four months later, we sent a letter to each member of this Board, again laying out the unlawful conduct of the POST Board and requesting immediate corrective action. We received no reply. We see no indication that this Board intends to take the necessary action.

Our requests at that Board meeting and in our letter were clear and simple. You can refer to that letter, but I will repeat them briefly:

1) The complaint that was investigated by Detective Bluhm of the St. Cloud Police Department must be reconsidered by the POST Board Complaint Committee, and that committee must this time follow the requirements in State Statute 214.10, most particularly those in Subdivisions 10 and 11, regarding proper notice, opportunity for the complaining party to be heard by the committee, and the access to evidence that was withheld from the committee by the Executive Director.

2) Proper and lawful consideration of other complaints we submitted. These other complaints were not even investigated. When the relevant law enforcement agencies refused to process these complaints in even the most minimal fashion in compliance with the procedures set by the POST Board, it became the responsibility of the POST Board to enforce those standards, and it is the responsibility of the POST Board to refer the complaints to an independent investigator when the relevant law enforcement agency refuses to do its job.

3) Disciplinary action against the licenses of chief law enforcement officers who fail to follow the procedures set by the POST Board. Your Rule 6700.2600 says, "Complaints which allege misconduct by a licensee shall be processed according to the agency's written procedures. Failure to comply with these procedures or any other provisions of parts 6700.2000 to 6700.2500 shall be grounds for disciplinary action against the chief law enforcement officer's license." For you to enforce the rules you establish, there must be accountability for those who repeatedly and flagrantly violate those rules.

4) Immediate action on the complaints submitted by Officers Watt and Erkenbrack of Crystal MN. These are complaints against their chief law enforcement official, the Police Chief of Crystal, for illegal whistleblower retaliation. As such, these complaints are the direct responsibility of the POST Board – there is no other avenue for administrative action against chiefs who violate the law as well as your requirements.

5) Proper and legal response to our Data Practice requests, as discussed by Michelle Gross.

All of these actions are required by law and by your own rules. They are **your** responsibilities, as a Board, and as individual members of this Board. Normally these actions would be handled properly and

lawfully by your Executive Director, with only routine oversight by the Board. But we came to your Board meeting a year ago because we could clearly see that the Executive Director at that time was only stalling and stonewalling.

We welcome your new Executive Director, and we should be able to expect that he will, with your oversight, comply with the law. However, it is in the end your responsibility as a Board, to ensure that he does that.

This has gone on far too long. We have exhausted our administrative remedies. As the POST Board, you all have an important role to play in combating police misconduct, bringing accountability to local law enforcement agencies as well as their officers, and setting the model for seeing that the law applies to all – even to those who enforce it.

Since we were last here, and especially in the last five months, there has been much more attention paid to police misconduct, and much more scrutiny of the agencies and methods used to deter and punish police brutality. Here in MN, you are the highest body with that authority, and as such, you should and will be more subject to that attention. It is about time.

ATTACHMENT C

COMMUNITIES UNITED AGAINST POLICE BRUTALITY
POST BOARD DEMANDS

These demands will inform both our comments at the POST Board meeting and our protest on October 22, 2015.

Preamble

The POST Board is the licensing agency for law enforcement officers in Minnesota and is responsible for ensuring the professionalism of law enforcement departments in the state of Minnesota. Their ongoing failure to enforce appropriate standards for their licensees or hold them accountable for misconduct has turned the agency into a rubber stamp for brutal policing.

Situation: The POST Board accepts complaints and even has a complaint form on their website but fails to address these complaints in a meaningful way.

Our Demand: The POST Board has a mandate and procedures for addressing complaints. Effective immediately, the POST Board must stop throwing out complaints from community members and must address those complaints in a meaningful way, including taking action on the licenses of licensees.

Situation: The POST Board has specific requirements ensconced in state statute and their administrative rules on how they are to address complaints. These include assigning an independent investigator, holding a hearing, providing 30 days' notice of the hearing to the complainant and subject officer so they may attend, providing the complainant with the opportunity to submit additional evidence, and notifying the complainant of the outcome of the hearing. None of this happened with any of the 32 complaints we filed on behalf of victims of the Metro Gang Strike Force or the many other complaints filed by community members who have contacted us.

Our Demand: The POST Board must immediately begin following their own statutes and administrative rules in the handling of complaints. The POST Board must provide a rehearing on our complaints as well as for any complainants who request it.

Situation: The POST Board is the only venue for filing complaints against the chief law enforcement officer (CLEO) of each agency and is required by statute to accept and address these complaints. However, multiple complaints filed by our organization and others against CLEOs have been ignored.

Our Demand: The POST Board is to reconsider all complaints received on CLEOs in the past five years, including our complaints.

Situation: The POST Board's model policy on addressing complaints requires police agencies to notify individuals of the outcome of their complaints. However, the POST Board fails to follow its own policy as it has failed (and in some cases refused) to notify complainants of the outcome of complaints filed with the POST Board.

Our Demand: The POST Board must follow the mandates of the model policy it requires law enforcement agencies to adopt. This includes immediate notification to the complainant of any extensions in the investigation as well as the final outcome of the complaint process.

Situation: Other licensing boards address complaints, take action on the licenses of licensees, and publish information on these actions on their websites. The POST Board is totally lacking in transparency.

Our Demand: The POST Board must provide information on the handling of complaints and all actions taken against licensees on their website.

Situation: The POST Board refuses to abide by the Minnesota Government Data Practices Act, in violation of the law. The POST Board has failed to fulfill our January 2014 request for information on complaints received from members of the public. Information Policy Analysis Division has affirmed that this data is public.

Our Demand: The POST Board must immediately fulfill our data request, which is over 21 months old. The POST Board must consistently fulfill data requests in accordance with the Minnesota Government Data Practices Act.

Situation: Local agencies are required to adopt procedures for handling complaints, and the POST Board enforces that such policies be in place. But the POST Board does nothing to require that local agencies actually follow their written policies.

Our Demand: The POST Board must monitor local agency compliance with the rules for handling complaints, including investigation into those agencies which sustain hardly any complaints (such as Minneapolis – see our data on the OPCR). The POST Board must especially investigate complaints from the public which allege the failure of a local agency to follow the mandated procedures for handling complaints of misconduct.

Situation: The POST Board has insisted that it can only take action against a peace officer's license if that officer has been convicted of a gross misdemeanor or a felony, despite the enumeration of several other causes in its Rule 6700.1600.

Our Demand: The POST Board must take action in the full range of standards of conduct in its rules. The POST Board should amend its rules, particularly the Standards of Conduct, in order to enforce professional behavior by licensees.

Situation: The POST Board claims very limited power to discipline peace officers who engage in misconduct.

Our Demand: Where the POST Board feels its powers are too limited to adequately enforce professional standards, it should lobby the legislature for the necessary authority.